Supreme Court of the United States.

JOHN WATSON ET. AL. *v.* WM. A. JONES ET AL.

Where the pendency of prior suit is set up to defeat another, the *case* must be the same; there must be the same parties, or at least such as represent the same interest; there must be the same rights asserted and the same relief prayed for. This relief must be founded on the same facts and the title or essential basis of the relief must be the same.

Under these principles, *held* that this action was not the same as a previous one relating to the same subject matter, and therefore this court has jurisdiction of this case. [CLIFFORD and DAVIS, JJ., dissenting].

The property which is the subject matter of dispute being in possession of the marshal of the Louisville Chancery Court as receiver, this court will not interfere with his possession, nor will it enjoin from receiving it parties to whom the marshal is ordered by the Chancery Court to deliver it.

Where a subject matter of dispute is strictly and purely ecclesiastical in its character, matter which concerns theological controversy, church discipline, ecclesiastical government or the conformity of the members of the church to the standard of morals required of them, the ecclesiastical tribunal is the judge of its own jurisdiction, and its decisions upon that subject as well as on the merits of the case, are conclusive upon the civil courts.

The cases of ecclesiastical matters which come before civil courts classified and discussed by MILLER, J.

THIS was an appeal from the Circuit Court of the United States for the District of Kentucky. The facts appear in the opinion of the court, which was delivered by

MILLER, J.—This case belongs to a class, happily rare in our courts, in which one of the parties to a controversy, essentially ecclesiastical, resorts to the judicial tribunals of the state for the maintenance of rights which the church has refused to acknowledge, or found itself unable to protect. Much as such dissensions among the members of a religious society should be regretted, a regret which is increased when passing from the control of the judicial and legislative bodies of the entire organization to which the society belongs, an appeal is made to the secular authority; the courts when so called on must perform their functions as in other cases.

Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints. Conscious as we may be of the excited feeling engendered by this controversy, and of the extent to which it has agitated the intelligent and pious body of Christians in whose bosom it originated, we enter upon its consideration with the satisfaction of knowing that the principles on which we are to decide so much of it as is

proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us.

It is a bill in chancery in the Circuit Court of the United States for the District of Kentucky, brought by William A. Jones, Mary J. Jones, and Ellenor Lee, citizens of Indiana, against John Watson and others named, citizens of Kentucky, and against the trustees of the Third or Walnut Street Presbyterian Church, in Louisville, a corporation created by an act of the Legislature of that State. The trustees, McDougall, McPherson, and Ashcraft, are also sued, as citizens of Kentucky. Plaintiffs allege in their bill that they are members in good and regular standing of said church, attending its religious exercises under the pastorship of the Rev. John S. Hays, and that the defendants, George Fulton and Henry Farley, who claim without right to be trustees of the church, supported and recognized as such by the defendants, John Watson and Joseph Gault, who also, without right, claim to be ruling elders, are threatening, preparing and about to take unlawful possession of the house of worship and grounds belonging to the church and to prevent Hays, who is the rightful pastor, from ministering therein, refusing to recognize him as pastor, and as ruling elder, Thomas J. Hackney, who is the sole lawful ruling elder; and that when they obtain such possession they will oust said Hays and Hackney, and those who attend their ministrations, among whom are complainants.

And they further allege that Hackney, whose duty it is as elder, and McDougall, McPherson, and Ashcraft, whose duty as trustees it is to protect the rights thus threatened, by such proceeding in the courts as will prevent the execution of the threats and designs of the other defendants, refuse to take any steps to that end.

They further allege that the Walnut Street Church, of which they are members, now forms, and has ever since its organization in the year 1842, formed a part of the Presbyterian Church of the United States of America, known as the Old School, which is governed by a written constitution that includes the confession of faith, form of government, book of discipline and directory for worship, and that the governing bodies of the general church above the Walnut Street Church are, in successive order, the Presbytery of Louisville, the Synod of Kentucky and the General Assembly of the Presbyterian Church of the United States. That while plaintiffs and about one hundred and fifteen members who worship with them, and Mr. Hays, the paster, Hackney, the ruling elder,

and the trustees, McDougall, McPherson, and Ashcraft, are now in full membership and relation with the lawful General Presbyterian church aforesaid, the defendants named, with about thirty persons formerly members of said church, worshiping under one Dr. Yandell as pastor, have seceded and withdrawn themselves from said Walnut Street Church and from the General Presbyterian Church of the United States, and have voluntarily connected themselves with and are now members of another religious society, and that they have repudiated and do now repudiate and renounce the authority and jurisdiction of the various judicatories of the Presbyterian Church of the United States, and acknowledge and recognize the authority of other church judicatories which are disconnected from the Presbyterian Church of the United States and from the Walnut Street Church. And they allege that Watson and Gault have been, by order of the General Assembly of said church, dropped from the roll of elders in said church for having so withdrawn and renounced its jurisdiction, and the assembly has declared the organization to which plaintiffs adhere to be the true and only Walnut Street Presbyterian Church of Louisville.

They pray for an injunction and for general relief.

The defendants, Hackney, McDougall, McPherson and Ashcraft answer, admitting the allegations of the bill, and that though requested they had refused to prosecute legal proceedings in the matter.

The other defendants answer and deny almost every allegation of the bill. They claim to be the lawful officers of the Walnut Street Presbyterian Church, and that they and those whom they represent are the true members of the church. They deny having withdrawn from the local or the general church, and deny that the action of the general assembly cutting them off was within its constitutional authority. They say the plaintiffs are not, and never have been, lawfully admitted to membership in the Walnut Street Church, and have no such interest in it as will sustain this suit, and they set up and rely upon a suit still pending in the Chancery Court of Louisville, which they say involves the same subject matter and is between the same parties in interest as the present suit. They allege that in that suit they have been decreed to be the only true and lawful trustees and elders of the Walnut Street Church, and an order has been made to place them in possession of the church property, which order remains unexecuted, and the property is still in the possession of the marshal of that court as its receiver. These facts are relied on in bar to the present suit.

This statement of the pleadings is indispensable to an understanding of the points arising in the case. So far as an examination of the evidence may be necessary it will be made, as it is required in the consideration of those points.

The first of these concerns the jurisdiction of the Circuit Court, which is denied; first, on the ground that plaintiffs have no such interest in the subject of litigation as will enable them to maintain the suit, and, secondly, on matters arising out of the alleged proceedings in the suit in the Chancery Court of Louisville.

The allegation that plaintiffs are not lawful members of the Walnut Street Church is based upon the assumption that their admission as members was by a pastor and elders who had no lawful authority to act as such. As the claim of those elders to be such is one of the matters which this bill is brought to establish, and the denial of which makes an issue to be tried, it is obvious that the objection to the interest of plaintiffs must stand or fall with the decision on the merits, and cannot be decided as a preliminary question. Their right to have this question decided, if there is no other objection to the jurisdiction, cannot be doubted. Some attempt is made in the answer to question the good faith of their citizenship, but this seems to have been abandoned in the argument.

In regard to the suit in the Chancery Court of Louisville, which the defendants allege to be pending, there can be no doubt but that court is one competent to entertain jurisdiction of all the matters set up in the present suit. As to those matters, and to the parties, it is a court of concurrent jurisdiction with the Circuit Court of the United States, and as between those courts the rule is applicable that the one which has first obtained jurisdiction in a given case must retain it exclusively until it disposes of it by a final judgment or decree.

But when the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or at least such as represent the same interest, there must be the same rights asserted, and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same.

The identity in these particulars should be such that, if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties.

In the case of *Barrows* v. *Kindred*, 4 Wallace 397, which was an action of ejectment, the plaintiff showed a good title to the land, and defendant relied on a former judgment in his

favor, between the same parties for the same land, the statute of Illinois making a judgment in such an action as conclusive as in other personal actions, except by way of a new trial But this court held that, as in the second suit plaintiff introduced and relied upon a new and different title, acquired since the first trial, that judgment could be no bar, because that title had not been passed upon by the court in the first suit.

But the principles which should govern in regard to the identity of the matters in issue in the two suits to make the pendency of the one defeat the other, are as fully discussed in the case of *Buck* v. *Colbath*, 3 Wallace 334, where that was the main question, as in any case we have been able to find. It was an action of trespass, brought in a State court, against the marshal of the Circuit Court of the United States for seizing property of plaintiff, under a writ of attachment from the Circuit Court. And it was brought while the suit in the Federal Court was still pending, and while the marshal held the property subject to its judgment. So far as the *lis pendens* and possession of the property in one court, and a suit brought for the taking by its officer in another, the analogy to the present case is very strong. In that case the court said: "It is not true that a court, having obtained jurisdiction of a subject matter of suit, and of parties before it, thereby excludes all other courts from the right to adjudicate upon other matters having a very close connection with those before the first court, and in some instances requiring the decision of the same question exactly. In examining into the exclusive character of the jurisdiction in such cases, we must have regard to the nature of the remedies, the character of the relief sought, and the identity of the parties in the different suits." And it might have been added, to the facts on which the claim for relief is founded.

"A party," says the court by way of example, "having notes secured by a mortgage on real estate, may, unless restrained by statute, sue in a court of chancery to foreclose his mortgage, and in a court of law to recover a judgment on his note, and in another court of law in an action of ejectment for possession of the land. Here, in all the suits, the only question at issue may be the existence of the debt secured by the mortgage. But, as the relief sought is different, and the mode of proceeding different, the jurisdiction of neither court is affected by the proceedings in the other." This opinion contains a critical review of the cases in this court of *Hagan* v. *Lucas*, 10 Peters 402; *Peck* v. *Jenness*, 7 How. 624; *Taylor* v. *Carryl*, 20 How. 594; and *Freeman* v. *Howe*, 24 How. 450, cited

and relied on by counsel for appellants; and we are satisfied it states the doctrine correctly.

The limits which necessity assigns to this opinion forbids our giving, at length, the pleadings in the case in the Louisville Chancery Court. But we cannot better state what is, and what is not, the subject matter of that suit or controversy, as there presented and as shown throughout its course, than by adopting the language of the Court of Appeals of Kentucky, in its opinion delivered at the decision of that suit, in favor of the present appellants. "As suggested in argument," says the court, "and apparently conceded on both sides, this is not a case of division or schism in a church; nor is there any question as to which of the two bodies should be recognized as the Third or Walnut Street Presbyterian Church. Neither is there any controversy as to the authority of Watson and Gault, to act as ruling elders; but the sole inquiry to which we are restricted in our opinion, is whether Avery, McNaughtan and Leech are also ruling elders, and therefore members of the session of the church."

The summary which we have already given of the pleadings in the present suit shows conclusively a different state of facts, different issues, and a different relief sought. This *is* a case of a division or schism in the church. It *is* a question as to which of two bodies shall be recognized as the Third or Walnut Street Presbyterian Church. There *is* a controversy as to the authority of Watson and Gault to act as ruling elders, that authority being denied in the bill of complainants, and, so far from the claim of Avery, McNaughtan and Leech to be ruling elders being the sole inquiry in this case, it is a very subordinate matter, and it depends upon facts and circumstances altogether different from those set up and relied on in the other suit, and which did not exist when it was brought. The issue here is no longer a mere question of eldership, but it is a separation of the original church members and officers, into two distinct bodies, with distinct members and officers, each claiming to be the true Walnut Street Presbyterian Church, and denying the right of the other to any such claim.

This brief statement of the issues in the two suits leaves no room for argument to show that the pendency of the first can not be pleaded either in bar or in abatement of the second.

The supplemental petition filed by plaintiffs in that case, after the decree of the Chancery Court had been reversed on appeal, and which did contain very much the same matter found in the present bill, was, on motion of plaintiffs' counsel, and, by order of the court, dismissed, without prejudice, be-

fore this suit was brought, and, of course, was not a *lis pendens* at that time.

It is contended, however, that the delivery to the trustees and elders of the body of which plaintiffs are members, of the possession of the church building, can not be granted in this suit, nor can the defendants be enjoined from taking possession as prayed in the bill, because the property is in the actual possession of the marshal of the Louisville Chancery Court as its receiver, and because there is an unexecuted decree of that court ordering the marshal to deliver the possession to defendants.

In this the counsel for appellants are, in our opinion, sustained, both by the law and by the state of the record of the suit in that court.

The court, in the progress of that suit, made several orders concerning the use of the church, and finally placed it in the possession of the marshal as a receiver, and there is no order discharging his receivership; nor does it seem to us that there is any valid order finally disposing of the case, so that it can be said to be no longer in that court. For, though the Chancery Court did, on the 20th March, 1867, after the reversal of the case in the Court of Appeals, enter an order reversing its former decree and dismissing the bill, with costs, in favor of the defendants, the latter, on application to the Appellate Court, obtained another order dated June 26. By this order, or mandate to the Chancery Court, it was directed to render a judgment in conformity to the opinion and mandate of the court, restoring possession, use and control of the church property to the parties entitled thereto, according to said opinion, and so far as they were deprived thereof by the marshal of the Chancery Court under its order.

In obedience to this mandate the Chancery Court, on the 18th September, three months after the commencement of this suit, made an order that the marshal restore the possession, use and control of the church building to Henry Farley, George Fulton, B. F. Avery, or a majority of them, as trustees, and to John Watson, Joseph Gault and Thos. J. Hackney, or a majority of them, as ruling elders, and to report how he had executed the order, and reserving the case for such further order as might be necessary to enforce full obedience. It is argued here by counsel for appellees that the case was, in effect, disposed of by the orders of the Chancery Court, and nothing remained to be done which could have any practical operation on the rights of the parties.

But if the Court of Appeals, in reversing the decree of the chancellor in favor of plaintiffs, was of opinion that defend

ants should be restored to the position they occupied in regard to the possession and control of the property before that suit began, we have no doubt of their right to make such order as was necessary to effect that object; and, as the proper mode of doing this was by directing the chancellor to make the necessary order and have it enforced as chancery decrees are enforced in his Court, we are of opinion that the order of the Court of Appeals, above recited, was in essence and effect a decree in that cause for such restoration, and that the last order of the Chancery Court, made in accordance with it, is a valid subsisting decree, which, though final, is unexecuted.

The decisions of this court in the cases of *Taylor* v. *Carryl*, 20 How. 594, and *Freeman* v. *Howe*, 24 How. 450, and *Burk* v. *Colbath*, 5 Wallace, are conclusive that the marshal of the Chancery Court cannot be displaced as to the mere actual possession of the property, because that might lead to a personal conflict between the officers of the two courts for that possession. And the Act of Congress of March 2, 1793, 1 U. S. Statutes 334, § 5, as construed in the cases of *Diggs* v. *Walcott*, 4 Cranch 192, and *Peck* v. *Jenness*, 7 How. 625, are equally conclusive against any injunction from the Circuit Court, forbidding the defendants to take the possession which the unexecuted decree of the Chancery Court requires the marshal to deliver to them.

But, though the prayer of the bill in this suit does ask for an injunction to restrain Watson, Gault, Fulton and Farley from taking possession, it also prays such other and further relief as the nature of the case requires, and especially that said defendants be restrained from interfering with Hays, as pastor, and plaintiffs in worshiping in said church. Under this prayer for general relief, if there was any decree which the Circuit Court could render for the protection of the right of plaintiffs, and which did not enjoin the defendants from taking possession of the church property, and which did not disturb the possession of the marshal of the Louisville Chancery, that court had a right to hear the case and grant that relief. This leads us to inquire what is the nature and character of the possession to which those parties are to be restored.

One or two propositions which seem to admit of no controversy are proper to be noticed in this connection. 1. Both by the Act of the Kentucky Legislature creating the trustees of the church a body corporate, and by the acknowledged rules of the Presbyterian Church, the trustees were the mere nominal title holders and custodians of the church property, and

other trustees were, or could be elected by the congregation, to supply their places once in every two years. 2. That in the use of the property for all religious services or ecclesiastical purposes, the trustees were under the control of the church session. 3. That by the constitution of all Presbyterian churches, the session, which is the governing body in each, is composed of the ruling elders and pastor, and in all business of the session the majority of its members govern, the number of elders for each congregation being variable.

The trustees obviously hold possession for the use of the persons who, by the constitution, usages and laws of the Presbyterian body, are entitled to that use. They are liable to removal by the congregation for whom they hold this trust, and others may be substituted in their places. They have no personal ownership or right beyond this, and are subject in their official relations to the property to the control of the session of the church.

The possession of the elders, though accompanied with larger and more efficient powers of control, is still a fiduciary possession. It is as a session of the church alone that they could exercise power. Except by an order of the session in regular meeting they have no right to make any order concerning the use of the building; and any action of the session is necessarily in the character of representatives of the church body by whose members it was elected.

If then this true body of the church, the members of that congregation, having rights of user in the building, have, in a mode which is authorized by the canons of the general church in this country, elected and installed other elders, it does not seem to us inconsistent or at variance with the nature of the possession which we have described, and which the Chancery Court orders to be restored to the defendants, that they should be compelled to recognize these rights, and permit those who are the real beneficiaries of the trust held by them to enjoy the uses, to protect which that trust was created. Undoubtedly, if the order of the Chancery Court had been executed, and the marshal had delivered the key of the church to defendants, and placed them in the same position they were before that suit was commenced, they could in any court having jurisdiction, and in a case properly made out, be compelled to respect the rights we have stated, and be controlled in the use of the possession by the court so far as to secure those rights.

All that we have said in regard to the possession which the marshal is directed to deliver to defendants is equally applicable to the possession held by him pending the execution of that order. His possession is a substitute for theirs, and the

order under which he received that possession, which we have recited, shows this very clearly.

The decree which we are now reviewing seems to us to be carefully framed on this view of the matter. While the rights of plaintiffs and those whom they sue for are admitted and established, the defendants are still recognized as entitled to the possession which we have described; and while they are not enjoined from receiving that possession from the Marshal, and he is not restrained from obeying the Chancery Court by delivering it, and while there is no order made on the marshal at all to interfere with his possession, the defendants are required by the decree to respect the rights of plaintiffs, and to so use the possession and control to which they may be restored as not to hinder or obstruct the true uses of the trust which that possession is intended to protect.

We are next to inquire whether the decree thus rendered is based upon an equally just view of the law as applied to the facts of this controversy. These, though making up a copious record of matter by no means pleasant reading to the sincere and thoughtful Christian philanthropist, may be stated with a resonable brevity so far as they bear upon the principles which must decide the case.

From the commencement of the late war of the insurrection to its close, the General Assembly of the Presbyterian Church at its annual meetings expressed in declaratory statements or resolutions its sense of the obligation of all good citizens to support the Federal Government in that struggle, and when, by the proclamation of President Lincoln, emancipation of the slaves of the States in insurrection was announced, that body also expressed views favorable to emancipation, and adverse to the institution of slavery. And at its meeting in Pittsburg in May, 1865, instructions were given to the presbyteries, the board of missions, and to the sessions of the churches, that when any persons from the Southern States should make application for employment as missionaries or for admission as members, or ministers of churches, inquiry should be made as to their sentiments in regard to loyalty to the government and on the subject of slavery; and if it was found that they had been guilty of voluntarily aiding the war of the rebellion, or held the doctrine announced by the large body of the churches in the insurrectionary States which had organized a new General Assembly, that "the system of negro slavery in the South is a divine institution, and that it is the peculiar mission of the Southern Church to conserve that institution," they should be required to repent and forsake these sins before they could be received.

In the month of September thereafter the Presbytery of Louisville, under whose immediate jurisdiction was the Walnut Street Church, adopted and published in pamphlet form what is called a "Declaration and testimony against the erroneous and heretical doctrines and practices which have obtained and been propagated in the Presbyterian Church of the United States during the last five years." This declaration denounced in the severest terms the action of the General Assembly in the matters we have just mentioned, declared their intention to refuse to be governed by that action, and invited the cooperation of all members of the Presbyterian Church who shared the sentiments of the declaration in a concerted resistance to what they called the usurpation of authority by the assembly.

It is useless to pursue the history of this controversy further with minuteness.

The General Assembly of 1866 denounced the declaration and testimony, and declared that every presbytery which refused to obey its order should be *ipso facto* dissolved, and called to answer before the next general assembly, giving the Louisville Presbytery an opportunity for repentance and conformity. The Louisville Presbytery divided, and the adherents of the declaration and testimony sought and obtained admission, in 1868, into "the Presbyterian Church of the Confederate States," of which we have already spoken as having several years previously withdrawn from the General Assembly of the United States and set up a new organization.

We cannot better state the results of these proceedings upon the relations of the church organizations and members, to each other and to this controversy, than in the language of the brief of appellants' counsel in this court:

In January, 1866, the congregation of the Walnut Street Church became divided in the manner stated above, each claiming to constitute the church, although the issue as to membership was not distinctly made in the chancery suit of *Avery* v. *Watson*. Both parties at this time recognized the same superior church judicatories.

On the 19th of June, 1866, the Synod of Kentucky became divided, the opposing parties in each claiming to constitute respectively the true presbytery and the true synod; each meanwhile recognizing and claiming to adhere to the same General Assembly. Of these contesting bodies the appellants adhered to one; the appellees to the other.

On the 1st of June, 1867, the presbytery and synod recognized by the appellants were declared by the General Assembly to be "in no sense a true and lawful synod and presbytery in

connection with and under the care and authority of the General Assembly of the Presbyterian Church in the United States of America," and were permanently excluded from connection with or representation in the assembly; by the same resolution the synod and presbytery adhered to by appellees were declared to be the true and lawful Presbytery of Louisville and Synod of Kentucky.

The Synod of Kentucky thus excluded, by a resolution adopted the 28th of June, 1867, declared "that in its future action it will be governed by this recognized sundering of all its relations to the aforesaid revolutionary body (the General Assembly) by the acts of that body itself." The presbytery took substantially the same action.

In this final severance of presbytery and synod from the General Assembly, the appellants and appellees continued to adhere to those bodies at first recognized by them respectively.

In the earliest stages of this controversy it was found that a majority of the members of the Walnut Street Church concurred with the action of the General Assembly, while Watson and Gault as ruling elders, and Fulton and Farley as trustees, constituting in each case a majority of the session and of the trustees, with Mr. McElroy, the pastor, sympathized with the party of the declaration and testimony of the Louisville Presbytery. This led to efforts by each party to exclude the other from participation in the session of the church and the use of the property. This condition of affairs being brought before the Synod of Kentucky before any separation, that body appointed a commission to hold an election by the members of the Walnut Street Church of three additional ruling elders. Watson and Gault refused to open the church for the meeting to hold this election, but the majority of the members of the congregation, meeting on the sidewalk in front of the church, organized and elected Avery, Leech and McNaughton, additional ruling elders, who, if lawful elders, constituted with Mr. Hackney a majority of the session. Gault and Watson, Farley and Fulton refused to recognize them as such, and hence the suit in the Chancery Court of Louisville, which turned exclusively on that question.

The newly-elected elders and the majority of the congregation have adhered to and been recognized by the General Assembly as the regular and lawful Walnut Street Church and officers, and Gault and Watson, Fulton and Farley, and a minority of the members, have cast their fortunes with those who adhered to the declaration and testimony party.

The division and separation finally extended to the Presbytery of Louisville and the Synod of Kentucky. It is now com-

plete and apparently irreconcilable, and we are called upon to declare the beneficial uses of the church property in this condition of total separation between the members of what was once a united and harmonious congregation of the Presbyian Church.

The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies may, so far as we have been able to examine them, be profitably classified under three general heads, which, of course, do not include cases governed by considerations applicable to a church established and supported by law as the religion of the State.

1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.

2. The second is when the property is held by a religious congregation, which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.

In regard to the first of these classes it seems hardly to admit of a rational doubt that an individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting and propagating definite religious doctrines or principles, provided that in doing so they violate no law of morality, and give to the instrument by which their purpose is evinced the formalities which the laws require. And it would seem also to be the obvious duty of the court, in a case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use. So long as there are persons qualified within the meaning of the original dedication, and who are also willing to teach the doctrines or principles prescribed in the Act of dedication, and so long as there is any one so interested in the execution of the trust as to have a standing in court, it must be that they can prevent the diversion of the property or fund

to other and different uses. This is the general doctrine of courts of equity as to charities, and it seems equally applicable to ecclesiastical matters.

In such case, if the trust is confided to a religious congregation of the independent or congregational form of church government, it is not in the power of the majority of that congregation, however preponderant, by reason of a change of views on religious subjects, to carry the property so confided to them to the support of new and conflicting doctrine. A pious man building and dedicating a house of worship to the sole and exclusive use of those who believe in the doctrine of the Holy Trinity, and placing it under the control of a congregation which at the time holds the same belief, has a right to expect that the law will prevent that property from being used as a means of support and dissemination of the Unitarian doctrine, and as a place of Unitarian worship. Nor is the principle varied when the organition to which the trust is confided is of the second or associated form of church government. The protection which the law throws around the trust is the same.

And though the task may be a delicate one and a difficult one, it will be the duty of the court in such cases, when the doctrine to be taught or the form of worship to be used is definitely and clearly laid down, to inquire whether the party accused of violating the trust is holding or teaching a different doctrine, or using a form of worship which is so far variant as to defeat the declared objects of the trust. In the leading case on this subject in the English courts, of the *Attorney-General* v. *Parson*, 3 Merrivale 353, Lord ELDON said, I agree with the defendants that the religious belief of the parties is irrelevant to the matters in dispute, except so far as the King's Court is called upon to execute the trust. That was a case in which the trust deed declared the house which was erected under it was for the worship and service of God. And though we may not be satisfied with the very artificial and elaborate argument by which the chancellor arrives at the conclusion, that because any other view of the nature of the Godhead than the Trinitarian view was heresy by the laws of England, and any one giving expression to the Unitarian view was liable to be severely punished for heresy by the secular courts, at the time the deed was made, that the trust was, therefore, for Trinitarian worship, we may still accept the statement that the court has the right to enforce a trust clearly defined on such a subject.

The case of *Miller* v. *Gable*, 2 Denio 492, appears to have been decided in the Court of Errors of New York on this

principle, so far as any ground of decision can be gathered from the opinions of the majority of the court as reported.

The second class of cases which we have described has reference to the case of a church of a strictly congregational or independent organization, governed solely within itself, either by a majority of its members or by such local organism as it may have instituted for the purpose of ecclesiastical government; and to property held by such a church, either by way of purchase or donation, with no other specific trust attached to it in the hands of the church than that it is for the use of that congregation as a religious society.

In such cases where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property.

The minority in choosing to separate themselves into a distinct body, and refusing to recognize the authority of the governing body, can claim no rights in the property from the fact that they had once been members of the church or congregation.

This ruling admits of no inquiry into the existing religious opinions of those who comprise the legal or regular organization, for, if such was permitted, a very small minority, without any officers of the church among them, might be found to be the only faithful supporters of the religious dogmas of the founders of the church. There being no such trust imposed upon the property when purchased or given, the court will not imply one for the purpose of expelling from its use those who by regular succession and order constitute the church, because they may have changed in some respect their views of religious truth.

Of the cases in which this doctrine is applied no better representative can be found than that of *Shannon* v. *Frost*, 3 B. Monro 253, where the principle is ably supported by the learned Chief Justice of the Court of Appeals of Kentucky.

The case of *Smith* v. *Nelson*, 18 Verm. 511, asserts this doctrine in a case where a legacy was left to the Associate Congregation of Ryegate, the interest whereof was to be annually paid to their minister forever. In that case, though

the Ryegate congregation was one of a number of Presbyterian churches connected with the general Presbyterian body at large, the court held that the only inquiry was whether the society still exists, and whether they have a minister chosen and appointed by the majority, and regularly ordained over the society, agreeably to the usage of that denomination.

And though we may be of opinion that the doctrine of that case needs modification, so far as it discusses the relation of the Ryegate congregation to the other judicatories of the body to which it belongs, it certainly lays down the principle correctly if that congregation was to be treated as an independent one.

But the third of these classes of cases is the one which is oftenest found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is every way the most important.

It is the case of property acquired in any of the usual modes for the general use of a religious congregation, which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.

The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. In the case of an independent congregation we have pointed out how this identity or succession, is to be ascertained, but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government in regular succession, the presbytery over the session or local church, the synod over the presbytery, and the General Assembly over all. These are called, in the language of the church organs, judicatories, and they entertain appeals from the decisions of those below and prescribe corrective measures in other cases.

In this class of cases we think the rule of action which

should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law, have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

We concede at the outset that the doctrine of the English courts is otherwise. In the case of the *Attorney General* v. *Pearson*, cited before, the proposition is laid down by Lord ELDON, and sustained by the peers, that it is the duty of the court in such cases to inquire and decide for itself, not only what was the nature and power of these church judicatories, but what is the true standard of faith in the church organization, and which of the contending parties before the court holds to this standard. And in the subsequent case of *Craigdallie* v. *Aikman*, 2 Bligh 529, the same learned judge expresses in strong terms his chagrin that the Court of Sessions of Scotland, from which the case had been appealed, had failed to find on this latter subject, so that he could rest the case on religious belief, but had declared that in this matter there was no difference between the parties.

And we can very well understand how the Lord Chancellor of England, who is, in his office, in a large sense, the head and representative of the Established Church, who controls very largely the church patronage, and whose judicial decision may be, and not unfrequently is, invoked in cases of heresy and ecclesiastical contumacy, should feel, even in dealing with a dissenting church, but little delicacy in grappling with the most abstruse problems of theological controversy, or in construing the instruments which those churches have adopted as their rules of government, or inquiring into their customs and usages. The dissenting church in England is not a free church in the sense in which we apply the term in this country, and it was much less free in Lord ELDON'S time than now. Laws then existed upon the statute book hampering the free exercise of religious belief and worship in many most oppressive forms, and though Protestant dissenters were less burdened than Catholics and Jews, there did not exist that full, entire and practical freedom for all forms of religious belief and practice which lies at the foundation of our political principles, and it is quite obvious, from an examination of the series of cases growing out of the organization of the Free Church of Scotland, found in Shaw's Reports of Cases in the Court of Sessions, that it was

only under the pressure of Lord ELDON'S ruling established in the House of Lords, to which final appeal lay in such cases, that the doctrine was established in the Court of Sessions after no little struggle and resistance.

The full history of the case of *Craigdallie* v. *Aikman*, in the Scottish Court, which we cannot further pursue, and the able opinion of Lord MEADOWBANK in *Galbraith* v. *Smith*, 15 Shaw 808, show this conclusively.

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian Churches) has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case to one which is less so.

We have said that these views are supported by the preponderant weight of authority in this country, and for the reasons which we have given, we do not think the doctrines of the English Chancery Court on this subject should have with us the influence which we would cheerfully accord to it on others.

We have already cited the case of *Shannon* v. *Frost*, 3 B. Monroe, in which the appellate court of the State where this controversy originated, sustains the proposition clearly and fully. "This court," says the Chief Justice, "having no ecclesiastical jurisdiction, cannot revise or question ordinary acts of church discipline. Our only judicial power in the case arises from the conflicting claims of the church property and the use of it. We cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly, cut off from the body of the church."

In the subsequent case of *Gibson* v. *Armstrong*, 7 B. Monroe 481, which arose out of the general division of the Methodist Episcopal Church, we understand the same principles to be laid down as governing that case, and in the case of *Watson* v. *Avery* 2 Bush 332, the case relied on by appellants as a bar, and considered in the former part of this opinion, the doctrine of *Shannon* v. *Frost* is in general terms conceded, while a distinction is attempted which we will consider hereafter.

One of the most careful and well considered judgments on the subject is that of the Court of Appeals of South Carolina, delivered by Chancellor JOHNSON in the case of *Harmon* v. *Dreher*, 2 Speer's Eq. 87. The case turned upon certain rights in the use of the church property claimed by the minister, notwithstanding his expulsion from the synod as one of its members.

"He stands," says the chancellor "convicted of the offenses alleged against him, by the sentence of the spiritual body of which he was a voluntary member, and whose proceedings he had bound himself to abide. It belongs not to the civil power to enter into or review the proceedings of a spirtual court. The structure of our government has for the preservation of civil liberty rescued the temporal institutions from religious interference. On the other hand it has secured religious liberty from the invasion of civil authority. The judgments, therefore, of religious associations, bearing on their own members, are not examinable here, and I am not to inquire whether the doctrines attributed to Mr. Dreher were held by him, or whether if held were anti-Lutheran; or whether his conduct was or was not in accordance with the duty he owed to the Synod or to his denomination. * * * When a civil right depends upon an

ecclesiastical matter it is the civil court and not the ecclesiastical which is to decide. But the civil tribunal tries the civil right, and no more, taking the ecclesiastical decisions out or which the civil right arises, as it finds them." The principle is reaffirmed by the same court in the John's Island Church case, 2 Richardson Eq. 215.

In *Den* v. *Bolton*, 7 Halstead 206, the Supreme Court of New Jersey asserts the same principles, and though founding its decision mainly on a statute, it is said to be true on general principles.

The Supreme Court of Illinois in the case of *Ferraria* v. *Vaucancelles*, 25 Ill., 456, refers to the case of *Shannon* v. *Frost*, 3 B. Monroe, with approval, and adopts the language of the court that "the judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they became members they did so upon the condition of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals."

In the very important case of *Chase* v. *Cheney*, recently decided in the same court, 10 Am. L. R. N. S, 295, Judge LAWRENCE, who dissented, says he understands the opinion as implying that in the administration of ecclesiastical discipline, and where no other right of property is involved than loss of the clerical office or salary incident to such discipline, a spiritual court is the exclusive judge of its own jurisdiction, and that its decision of that question is binding on the secular courts. And he dissents with Judge SHELDON from the opinion because it so holds.

In the case of *Watson* v. *Ferris*, 45 Missouri 183, which was a case growing out of the schism in the Presbyterian Church in Missouri in regard to this same declaration and testimony and the action of the General Assembly, the court held that whether the case was regularly or irregularly before the assembly was a question which the assembly had a right to determine for itself, and no civil court could reverse, modify, or impair its action in a matter of merely ecclesiastical concern.

We cannot better close this review of the authorities than in the language of the Supreme Court of Pennsylvania, in the case of the *German Reformed Church* v. *Siebert*, 5 Barr 291: "The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judges of what constitutes an offense against the word of God and the discipline of the church. Any other than those courts must be incompetent judges of matters of faith, discipline and doctrine; and

civil courts if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt which would do anything but improve either religion or good morals."

In the subsequent case of *McGinnis* v. *Watson*, 41 Penn. 21, this principle is again supplied and supported by a more elaborate argument.

The Court of Appeals of Kentucky, in the case of *Watson* v. *Avery*, before referred to, while admitting the general principle here laid down, maintains that when a decision of an ecclesiastical tribunal is set up in the civil courts, it is always open to inquiry whether the tribunal acted within its jurisdiction, and if it did not, its decision would not be conclusive.

There is, perhaps, no word in legal terminology so frequently used as the word jurisdiction, so capable of use in a general and vague sense, and which is used so often by men learned in the law without a due regard to precision in its application. As regards its use in the matters we have been discussing it may very well be conceded that if the General Assembly of the Presbyterian Church should undertake to try one of its members for murder, and punish him with death or imprisonment, its sentence would be of no validity in a civil court or anywhere else. Or if it should at the instance of one of its members entertain jurisdiction as between him and another member as to their individual right to property, real or personal, the right in no sense depending on ecclesiastical questions, its decision would be utterly disregarded by any civil court where it might be set up. And it might be said in a certain general sense very justly, that it was because the General Assembly had no jurisdiction of the case. Illustrations of this character could be multiplied in which the proposition of the Kentucky court would be strictly applicable.

But it is a very different thing where a subject matter of dispute, strictly and purely ecclesiastical in its character—a matter over which the civil courts exercise no jurisdiction—a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them, becomes the subject of its action. It may be said here, also, that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted; and in a sense often used in the courts, all of those may be said to be questions of jurisdiction. But it is easy to

see that if the civil courts are to inquire into all these matters the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the *criteria* by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord ELDON, and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions.

And this is precisely what the Court of Appeals of Kentucky did in the case of *Watson* v. *Avery*. Under cover of inquiries into the jurisdiction of the synod and presbytery over the congregation, and of the general assembly over all, it went into an elaborate examination of the principles of Presbyterian Church government, and ended by overruling the decision of the highest judicatory of that church in the United States, both on the jurisdiction and the merits; and substituting its own judgment for that of the ecclesiastical court, decides that ruling elders, declared to be such by that tribunal, are not such, and must not be recognized by the congregation, though four-fifths of its members believe in the judgment of the assembly and desired to conform to its decree.

But we need pursue this subject no further. Whatever may have been the case before the Kentucky court, the appellants in the case presented to us have separated themselves wholly from the organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action, and refuse to abide by its judgments. They have first erected themselves into a new organization and have since joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. Under any of these decisions which we have examined, the appellants, in their present position, have no right to the property, or to the use of it, which is the subject of this suit.

The novelty of the questions presented to this court for the first time, their intrinsic importance and far-reaching influence, and the knowledge that the schism in which the case originated has divided the Presbyterian churches throughout Kentucky and Missouri, have seemed to us to justify the careful and laborious examination and discussion which we have made of the principles which should govern the case.

For the same reasons we have held it under advisement

for a year; not uninfluenced by the hope that since the civil commotion, which evidently lay at the foundation of the trouble, has passed away; that charity, which is so large an element in the faith of both parties, and which, by one of the apostles of that religion is said to be the greatest of all the Christian virtues, would have brought about a reconciliation.

But we have been disappointed. It is not for us to determine or apportion the moral responsibility which attaches to the parties for this result. We can only pronounce the judgment of the law as applicable to the case presented to us, and that requires us to affirm that decree of the Circuit Court as it stands.

The Chief Justice did not sit on the argument of this case, and took no part in its decision.

CLIFFORD and DAVIS JJ. dissented.

The opinion of the Kentucky Court of Appeals, deciding most of the questions here discussed, so far as involved in the merits of this case, with our own comments, will be found in 9 Law Reg. N. S. 210–225, where the case is called *Gartin* v. *Penick*, and that of the Chancellor of the Louisville Chancery Court, embracing the same controversy, with a brief review, appears in the same volume pp. 401–415, under the name of *Fulton* v. *Farley*.

1. We have carefully examined the foregoing opinion, and that of the dissenting judges, and reviewed the opinions of the Kentucky State Courts, with the view of refreshing our recollection of all the facts connected with the controversy, in order, if possible, to form some reasonable conjecture of the grounds of such surprising divergence of opinion among men and judges of such wisdom and experience, and upon a subject apparently of no peculiar difficulty.

But there seems no adequate solution of the apparent mystery, except in the well-known, but oft forgotten fact, that when partizan zeal and passion are allowed to sway opinions, even with the wisest and best men, no one need be surprised at any result, however preposterous or absurd it may seem to those not within the range of such influences.

There can be no question, probably, that the men who have decided the cardinal question upon which this embittered controversy turns, or has been made to turn, at the three several times, before the General Assembly of the Church, in the Kentucky Court of Appeals, and in the U. S. Supreme Court were men of the highest character and attainments, in all the qualities of eminent judicial ability and fairness, to be found anywhere in the country; and for the humble editor of a law journal now to attempt to determine the right and justice of those somewhat divergent and conflicting opinions, may naturally seem to most persons not a little presumptuous. But, if we say anything, we are bound, in justice to our readers, to say precisely what we think and all we think of those opinions, without reserve or evasion. And if we do all that, we shall feel compelled to say that the decisions on this subject have been unfortunate to all concerned, in our humble judgment. But they have been made unquestionably in all good faith and honesty, and must be recognized as existing facts.

We must begin, then, by repeating what we have before said of the two former opinions, at the time of publication in this journal, that they seem to us based upon entirely false principles, and every way calculated to widen the breach which they should have studiously labored to heal and close up. The opinion of Mr. Justice MILLER, with the spirit of dignified judicial reserve, very proper within reasonable limits, seems studiously to keep out of view all the facts connected with the original controversy, except those which seemed indispensable to the comprehension of his opinion, and most favorable to its

adoption. We will state, therefore, some few more of these facts, in order to render our own comments more intelligible.

1. It will appear by reference to the opinion of the Court of Appeals, and the papers there referred to, that the effect of the discipline exercised by the General Assembly of the church would be to cut off and virtually excommunicate about three-fourths of their membership in the State of Kentucky—and this, not upon the ground of any overt act of disloyalty of a criminal character, as amounting either to treason or misprision of treason, but solely for entertaining and expressing opinions upon the subject of slavery and State rights, not in entire conformity with those of the General Assembly—or, indeed, with what we ourselves have always regarded as the wisest and soundest constitutional views. But, after all, it must be confessed by the most rampant and outspoken in favor of the opposite opinions, they were merely abstract opinions, upon which men could differ, and did differ, in every State and country in the civilized world, and where there was not the slightest ground to doubt the entire good faith and honest sincerity of those who professed these obnoxious opinions. It was then little short of madness in this free country, where men choose and change their religious opinions at will, from day to day, to attempt to place them under religious discipline and censure for these speculative opinions upon mere constitutional law. There could scarcely have been anything more unreasonable or offensive, or more calculated to exasperate those holding such ill-founded opinions, but which they would be little likely to surrender at the beck of an over-bearing ecclesiastical judicatory. All of us can easily comprehend the folly of any such course, by making the case our own. And although *our* opinions have been vindicated by the event of the war, and may now fairly claim always to have been the truth, yet it is by no means certain that men suffer martyrdom any more willingly, or surely in defense of truth than of error. To every sincere heart, his own opinions are the truest; they must be so to him, or the world could not be held together. The proceeding of the assembly was, therefore, to say the best, severe and arbitrary, and exceedingly ill advised. Nothing could have been more so. If the men who exercised such disciplinary powers had not been rendered as insane as their antagonists, by the mad passions engendered by the civil strife of the country, it is not to be supposed they would have done as they did. All we can say, therefore, is that unquestionably both parties are equally sincere—and both, in a moral point of view, just about equally in fault, and as is not uncommon in religious and especially political controversies, that party having the power proceeded at once to crush out and exterminate the other. There could scarcely have been any action of the majority more uncharitable or unchristian, and surely nothing less calculated to heal the breach. But as we said in our former comments, we should feel compelled to regard the action of the General Assembly as entirely within the range of ecclesiastical jurisdiction. For while the State of Kentucky remained within the Union, as it did throughout the conflict, there can be no doubt of the duty of every citizen or dweller, under the protection of such government, to yield it the support of loyal acts and loyal words, whatever he might think of the wisdom or justice of its course. And no doubt any church, inspired by any such burning zeal as seemed to demand such action, might very naturally import and exalt the duty of allegiance, which is mainly a political duty, into the sphere of moral, or even religious obligation, and having wisely or unwisely done so, it became the duty of all its members to conform to such unusual demands upon their forbearance or their submission. And upon failure to do so, we do not well comprehend why the church judicatory might not enforce against the offending members the penalties of such spiritual censures or forfeitures as they might deem appropriate. We should feel compelled to agree in opinion, mainly, with the deliverances of Mr. Justice MILLER upon this part of the case. For unless ecclesiastical courts and assemblies can be allowed this extent of authority, to decide their own controversies in their own way, when fairly within the range of spiritual jurisdiction, they will be far more helpless than any mere voluntary association, than even an arbitrator appointed by the parties to a contract or a controversy. But the power

to decide a question, and the wisdom of the justice of the decision, rest no doubt upon entirely different grounds. The power may be most unquestionable, and the decision most unreasonable, or even absurd, as the reports of the judicial decision throughout the country will abundantly show. We must therefore conclude that, although the action of the General Assembly was unquestionably valid, as was the action of Queen Mary, of England, in burning heretics, it was nevertheless clearly oppressive and tyrannical, and therefore unjust and essentially wrong in a moral point of view; the very opposite of what it should have been, it was nevertheless valid in strict law. It was no doubt well for the General Assembly to condemn the disloyal conduct of its members in the same spirit, and punish the offenders to the same extent they would condemn any other evil opinion or action, and punish the offenders. But under the circumstances great forbearance and wisdom was certainly demanded, in regard to the treatment of such intense and honest opinions upon mere abstract principles and those essentially of a political character. If the assembly of the church could have called into action the requisite degree of Christian forbearance and charity, to have waited till the event of the war, all divisions would speedily have been healed. But by reason of the ill-advised course which they did pursue, they have rendered a small matter the source of all but incurable rancor. The decision of the General Assembly was therefore as bad as it could have been, and gave great occasion to the subjects of their discipline to feel that the course might have been inspired, more or less, by partisan political zeal, which they, no doubt, did feel and believe in all sincerity, and which led them to appeal to the civil courts, which brings us to the second division of this unfortunate controversy, the decision of the State Court.

This too seems to us every way unfortunate and ill advised. For, if the State courts had left the matter to the correction of the church courts, it might soon have ceased to embitter the feelings of the parties, and a state of comparative peace and quiet have ensued. But the Court of Appeals, being the court of last resort on the question, thought the subject matter of the controversy not fairly within the range of ecclesiastical cognizance, and therefore that the action of the Church Assembly was of no force or validity whatever, and, as to all legal effect, left matters just where they would have been if no such action had taken place. We have on former occasions above referred to, said all we desired to say upon the legal soundness of this decision of the Court of Appeals, and the cases bearing on the point will be found in our former note. We agree fully with Justice MILLER, that the decision of the Court of Appeals is not supported, either by the just application of principles or of the authorities, and ought never to have been made, and indeed should be got rid of, if you please, in any legal mode. But all this does not seem to us fairly to meet the present legal difficulties in the case. For the Kentucky Court of Appeals have made the decision, and it now stares us full in the face, bad as it is. And this decision is now the law of Kentucky, and no other court on earth has any power to alter it. It can only be altered by statute of the Legislature or by reversal in the same court. No good lawyer can entertain any doubt that the church courts are to be regarded as subordinate in all respects, and wholly dependent upon the rules of law established by the decisions of the highest State tribunals. The extent of the jurisdiction of all inferior courts, whether civil or ecclesiastical, must depend upon the final decision of the Court of Appeals. Any other rule must lead inevitably to inextricable confusion. It is a point which requires no argument with lawyers. It is to all legal apprehension the most fundamental, and at the same time the most elementary, of constitutional principles, and is in its nature so simple that no argument or illustration can render it more so.

And this rule applied as much and as invincibly to the U. S. Supreme Court as to the humblest State tribunal. For that court, although in one sense, and within certain limits, it is a most august and imperial tribunal, has no such functions when it sits to try a cause between party and party, on the ground that such parties are citizens of different States. In this latter capacity it acts virtually in aid of the State courts

in the trial of a particular class of cases, which might equally well be tried in the State courts and which no doubt would have been left exclusively to that jurisdiction but for the apprehension, at the time the Constitution was adopted, that there would be found more perfect impartiality in the national courts; an apprehension not fully justified by experience, under the provision. And the national courts in trying this class of cases not only act in aid of the State courts, and virtually as State courts, but as subordinate tribunals to the highest court in the State; since their decisions upon questions of local law are required by the act of Congress to conform to those of the highest court in the State, or what is the same thing in other words, the law of the State. And, although the national courts have attempted some refinements in some former decisions, in order to escape from the operation of this rule of decision, it still abides, and is none the less of binding obligation and duty, because that court begins to struggle to escape from it, as may be inferred pretty obviously from the opinion in the present case.

3. We desire to say something more especially upon this question of the rule of law, applicable to this case in the United States Supreme Court. That question is virtually ignored, as we read the opinion, by the learned judge delivering the opinion, as much as if it did not exist. We are not much surprised at this, since it must have a very awkward bearing upon the action of that court, in the present case, when fairly and justly applied. But we are surprised that a judge of the deserved good reputation of Mr. Justice MILLER should not have more felt the embarrassments attending the entertaining jurisdiction at all in this case than is to be gathered from the opinion. The entire property which forms the subject matter of the controversy, was in the formal and actual custody of a receiver of the State court. The national courts could not then interfere with, or make any decree concerning it, without the express and flagrant violation of the rule established by repeated decisions in defense of their own jurisdiction, as against the interference of the State courts. Unless then the court were prepared to establish one rule for the national courts and another for the State courts, in regard to the just limits of exclusive jurisdiction, they must say that here was an invincible barrier against all interference with the property, while in the custody of the State courts; and this they do say. And as Courts of Equity, when called upon to decide the rights of property, or possession in regard to property, real or personal, will never interfere, unless they can not only make a final decree, but also carry the same into effect, we might naturally suppose the court would have been satisfied to deny all further jurisdiction in the case. If any humble State Court of Equity had so assumed to assert jurisdiction over a cause, respecting the title and right of possession of property then in the custody of the national courts, it would, no doubt, as it justly deserved, have been admonished that no such half-way jurisdiction existed among Courts of Equity of concurrent jurisdiction, and that it must desist, or meet the consequences of having its decree utterly disregarded.

We have examined the reports, first and last, a good deal upon this question of concurrent jurisdiction, in Courts of Equity, and we can find no case in any manner approaching the present; where one court has the custody of the subject matter of the controversy, which is here conceded, and another court of concurrent jurisdiction still assumes to take jurisdiction of the parties and decree what use they are to make of the property which the coördinate court has just decreed to them, and in such decree declared the legal uses. If such a course of proceedings deserves any other name than that of a blunder or a farce, then we must confess to having studied equity to little purpose. We believe there can be but one opinion in regard to the entire unquestionable soundness of the dissenting opinion, and we especially regret that anything so plainly and palpably at variance with established principles should have occurred in our highest national tribunal. For in other countries, everywhere indeed where the English equity law prevails, it will be regarded as quite incomprehensible that only two of the eight judges of that court should have comprehended the weight of the impediments against the jurisdiction. The form of the decree which the national courts have thus attempted to give in a matter so entirely one side of their lawful jurisprudence, can be of no force

whatever as against the decree of the Court of Appeals. And why there should have existed any desire on the part of the national courts thus to intrude their jurisdiction over a mere side issue never made in the pleadings as we understand them, is certainly more that we can comprehend. If it did not come from a very august tribunal, and supported by an elaborate argument from a very able and learned judge, we would say it appeared very childish and afforded another proof of the proverb *aliquando bonus dormitat Homerus*. It seems only explainable upon the ground that the court supposed the moral force of the opinion would have great weight, and might thus tend to do good in showing the parties the only legal mode of escape from the controversy. And *probably* the great and good man who gave a somewhat similar opinion in that court just before the civil war thought the same. We make no question this might have been the result here had the matter first come before this court, and then received the same determination here attempted to be given; for then it would have had the weight of a judicial judgment. But we conjecture it will now be too late for any obiter opinion of this character to produce any such good results. It is best as a general rule no doubt, for all courts, of however august character, to keep within the legitimate sphere of their appropriate jurisdiction, and not attempt to read homilies to their fellow-citizens, however wise or friendly such homilies may be.

But in discussing this question of jurisdiction we have almost forgotten our last starting point: the proper rule of law which must control the case. Upon this point we must be brief, and as what we say will be but a *resumé*, it may have the appearance in some sense of repetition. The controlling authority on this point must always be the Act of Congress establishing and defining the jurisdiction of the national courts, already referred to in the opinion of the learned judge. The framers of that act were wise and far-seeing men, and did not fail to comprehend the different attitudes of the national courts in deciding causes between citizens of different States, and when entertaining writs of error to the State courts, to revise all questions determined by those courts against the validity of any statute or constitutional provision of the national government. In the latter case the Supreme Court of the United States stood in the imposing attitude of the imperial tribunal of last resort, and could not be required to accept the rules of law from any source except its own sense of justice and right. But in the former case, as the national courts were exercising a jurisdiction strictly in aid of the State courts, in order to avoid uncertainty in the law of the State and consequent confusion, it became absolutely necessary to prescribe an uniform rule of decision This could fairly be expected to come only from the determination of the courts of last resort in the State. The act of Congress, therefore, with great justice and propriety, provided that in all such cases, and in all others where the national courts were exercising a private jurisdiction, between party and party, their decision should be made to conform to the law of the State where made. This *when* made. And it is no answer to this provision that the State courts have altered their rule of decision upon any particular point, and that the national courts will follow the former rule whenever they regard that as the better law. For the purpose of the provision being to preserve uniformity of decision in the State, it no more meets its spirit and intent for the national courts to conform to some former rule of the State court, which that court has declared erroneous, than it would to follow some statute of the State which had since been repealed.

The law of the highest judicial tribunal of the State upon matters of contract or of private right between party and party, is the rule by which such contract or such private right exists and can only fairly be measured or construed. It would, therefore be the only rule of law by which the national courts could decide in such cases, if there were no act of Congress requiring it. It is the rule, and the only rule, by which any foreign court or any court in any other of the States could be allowed to govern their decisions upon the same questions. And the national courts have no more right or authority to declare the law of Kentucky in a cause between party and party than any foreign tribunal, which indeed those courts are in all such cases.

Upon the just and fair application of

this rule it would be impossible for the national courts in this case to prescribe to the parties in this cause any other rule of law for the government of their conduct than those rules which the Court of Appeals had already declared in the very same cause, having full and final jurisdiction over it. And the attempt to do this, on the ground that the decision of that court was not sound law, or not in accordance with its former decisions, has certainly very much the appearance of an evasion, or voluntary disregard both of the act of Congress and the general rules of law applicable to the subject; for it is no argument in the case to say, what we freely admit, that the judgment of the Court of Appeals is not the soundest law; that it might better have been decided the other way, unless indeed the Supreme Court are sitting as a Court of Appeal or of Error from that judgment, which will not be claimed. It is in fact a co-ordinate and subordinate court, acting in aid of the State courts, and has no more right to go counter to the decisions of the Court of Appeals than any district court or justices' court in the State. It imports nothing that this court is the highest court in the nation. It is acting in no such capacity in giving this judgment; and if the Lord Chancellor of England was allowed by act of Parliament to hold county courts in an emergency, he must then be governed by the same rules of law which govern other county court judges.

If we have made ourselves intelligible it is all we desire. We trust we have spoken both of the court and the opinion, with all due respect, which we sincerely feel and desire never to forget, and it is scarcely needful for us to declare that we have no apprehension that any very awful consequences are to follow from this rather unseemly effort to grasp jurisdiction, even by the halves, of this almost national controversy, but presented in no national form. We do not affect to see in it, as some wiser men than we claim to be may do, any disposition in the national courts to override the State courts and trample upon and stamp out the last vestige of the light of State sovereignty or State rights.

We only desire to make one further query: Whether it can be possible that all the judges who indorse this judgment gave the subject so slight consideration, that it did not occur to them that this half-way jurisdiction which they were attempting to carve out of the case, which was exclusively under the cognizance and control of another court, if ever attempted to be enforced, must inevitably produce the same conflict between the State and national tribunals, which all the decisions of that court, and this in particular, so much deprecate and so studiously avoid. We have only to suppose that the elders and trustees recognized by the decree of the Court of Appeals as rightfully entitled to exercise the functions of those offices, and to whose custody and control that court commits the church property, should insist upon following the doctrine of the decree under which they hold and administer the property; and should consequently refuse to be governed by the requirements of the national courts in their half and half decree, and that the latter courts should proceed to enforce their decree.

The next step in equity procedure, as we understand it, will be for those holding and administering the property under the decree of the Court of Appeals, to apply to that court for a writ of assistance, and to have it enforced by the posse of the county. Do the Supreme Court of the United States seriously expect, under this state of affairs, that the Court of Appeals will desist from enforcing their decree until compelled to do so by military force? How then is a conflict between the authorities to be avoided? It might not seem altogether a pertinent question to propound to the court, but one cannot help entertaining it himself, whether any national administration, not absolutely bent upon destruction, would ever presume to enforce any such decree as this opinion directs, by military force; we trust no such madness will be attempted in our day. The opinion will, we trust, be regarded as chiefly valuable for the good law it contains upon the merits of the questions involved in the controversy before the Court of Appeals, but which, unfortunately, had been decided the other way by the only court having proper jurisdiction of the questions, or whose judgment was final in regard to them.

I. F. R.